



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 29850585

Date: FEB. 07, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, an electrical engineer and entrepreneur in the emergency vehicle signaling (EVS) industry, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the record did not establish that the Petitioner meets the initial evidence requirements for this classification, either by demonstrating his receipt of a major, international award or by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- Their entry into the United States will substantially benefit the country in the future.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a beneficiary’s one-time achievement (that is, a major, internationally recognized award). If a petitioner

does not submit this evidence, then they must provide documentation that the beneficiary meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner demonstrates that the beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

The Petitioner is an entrepreneur in the emergency vehicle signaling industry and has extensive professional experience in product engineering and development in this field, including experience with microcontroller programming, optics, signaling systems, and design of lenses for LED lighting applications. The record reflects that he intends to pursue work in the same field in the United States and has established a Texas limited liability company for this purpose.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must demonstrate that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner submitted evidence relating to the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (iv), (v), (vi), (viii) and (ix), summarized below:

- Membership in associations in the field;
- Judging the work of others in the field;
- Original contributions of major significance;
- Authorship of scholarly articles;
- Performance in leading or critical roles; and
- High salary, or other significantly high remuneration, in relation to others.

The Director determined that the Petitioner satisfied two of the six claimed criteria. Specifically, the Director concluded that he has authored scholarly articles and served in leading or critical roles for organizations that have a distinguished reputation, and thus satisfied the plain language of the criteria at 8 C.F.R. § 204.5(h)(3)(vi) and (viii). The record supports the Director's conclusion that the Petitioner meets these criteria.

On appeal, the Petitioner contends that the Director did not carefully review and consider the evidence submitted in support of the petition, and instead based the denial, in part, on evidence submitted with the Petitioner's previous Form I-140, Immigrant Petition for Alien Workers, requesting the same classification. Specifically, the Petitioner emphasizes that the Director's decision refers to evidence that was not submitted in support of the instant petition and fails to address relevant and probative evidence demonstrating that he meets additional criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner concedes that the prior petition, as filed, did not establish his eligibility but emphasizes that the two petitions are "entirely different."

Although we conduct de novo review, we conclude that a remand is warranted in this case because the Director's decision is insufficient for review. As noted by the Petitioner, the record reflects that the Director's analysis of the criteria at both 8 C.F.R. § 204.5(h)(3)(iv) and (ix) was copied verbatim from a March 8, 2023, decision denying the Petitioner's prior petition [REDACTED]. The Petitioner did not submit the same evidence in support of this petition, and therefore, the analysis does not reflect the Director's consideration of any of the Petitioner's claims and evidence with respect to these two criteria. Considering these facts, the Director's reliance on the prior decision was clearly in error.

An officer's written decision must fully explain the specific reasons for denial. *See* 8 C.F.R. § 103.3(a)(1)(i). When a decision does not meet these requirements, the petitioner does not have a fair opportunity to contest the decision on appeal. *See Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Because the Director's decision does not address the evidence submitted with the petition or in response to the RFE with respect to the criteria at 8 C.F.R. 204.5(h)(3)(iv) and (ix), we will remand the matter.

On remand, the Director is instructed to re-evaluate the evidence submitted in support of the petition to determine whether the Petitioner satisfied the plain language of at least three criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and to issue a new decision. The Director should also review the Petitioner's appellate brief, which further discusses the previously submitted evidence submitted in support of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3).

If the Director determines that the Petitioner satisfied at least three criteria at 8 C.F.R. § 204.5(h)(3), the new decision should evaluate, based on the totality of the evidence in the record, whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.